IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 2074 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No

KESHAVLAL NATHALAL JASANI

Versus

KARSANDAS KARODIMAL

Appearance:

MR JR NANAVATI for Petitioner

MR PM RAVAL for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 14/08/98

ORAL JUDGEMENT

This is tenant's revision under section 29(2) of the Bombay Rent Act, 1947.

The brief facts are that the respondent filed a suit for eviction of the revisionist on three grounds. The first was that the tenant was in arrears of rent for

more than six months and after service of notice of demand he failed to clear off the arrears. The second ground was subletting and the third ground was non user of the suit premises by the revisionist for a continuous period of six months before institution of the suit. Tenancy was determined by a composite notice of demand and eviction. Thereafter, the suit was filed for eviction, recovery of arrears of rent @ Rs.20/- p.m. and also for mesne profits.

The suit was resisted by the defendant revisionist denying all these allegations.

The Trial Court did not frame any issue on subletting. However, it found that the notice was valid and the tenant was in arrears of rent for 40 months. The Trial Court was however of the view that in view of two subsequent agreements to sell executed by the landlord in favour of the tenant the suit for eviction was required to be dismissed. The Trial Court further found that the landlord failed to establish that the revisionist did not use the premises for a continuous period of six months before the institution of the suit. With these findings the suit was dismissed by the Trial Court.

The landlord preferred an Appeal which was allowed. The decree for eviction was passed by the Appellate Court against which present revision has been preferred by the tenant.

Shri Thakar and Shri Raval representing the parties have been heard. The judgments of the two Courts below have been examined.

Both the Courts below observed and found that the landlord failed to establish that the tenant revisionist did not use the accommodation in suit for continuous period of six months before institution of the suit. This controversy is settled by the concurrent finding recorded by the two Courts below hence such finding does not require any interference in this appeal.

Coming to the only point for adjudication it has to be seen whether decree for eviction could be refused or could be passed on the ground of arrears of rent and if so whether such decree could be passed under section 12(3)(a) or under section 12(3)(b) of the Bombay Rent Act. It has also to be considered whether in view of the plea raised by the revisionist the decree for eviction is bad in law in view of two subsequent agreements to sell executed by the landlord in favour of the tenant.

At the outset it may be mentioned that the Appellate Court has categorically mentioned that in the rent note relationship of landlord and tenant between the parties was created and it continued even when the two agreements to sell were executed. In these agreements also stipulation was that the revisionist was to be treated as tenant. Thus, finding of the Trial Court that there existed no relationship of landlord and tenant between the parties after execution of two agreements to sell by the landlord in favour of the tenant was set aside and was rightly set aside by the lower Appellate Court. It may also be mentioned that mere execution of agreement to sell does not confer any title upon the tenant in the property nor is there any merger of status of the tenant with the status of the landlord. There is clear finding of fact recorded by the lower Appellate Court that the relationship of landlord and tenant between the parties continued through rent note and it was reiterated in the two agreements to sell.

It is also noteworthy that the property in suit was found to be evacuee property. The lower Appellate Court has observed that so far no sale certificate has been issued by the Custodian evacuee property in favour of the landlord. Consequently the landlord himself cannot claim to be the absolute owner of the property. Absolute title will pass in favour of the landlord only through sale certificate issued by the Custodian of the evacuee property. Thus, the landlord who is having inchoate ownership in the property cannot by mere agreement to sell transfer the same to the revisionist. However, there has been no saledeed in pursuance of these agreements to sell and mere agreement to sell does not confer title upon tenant or the so called purchaser. Further, the relationship of landlord and tenant between the parties was not extinguished by the so called agreements to sell.

If the relationship of landlord and tenant between the parties existed the next question for consideration is whether the decree for eviction could be passed under section 12(3)(a) of the Bombay Rent Act.

In the facts and circumstances of the case no decree for eviction under section 12(3)(a) could be passed by the Courts below for the obvious reason that the rent was not payable monthly. No doubt initially only rent was agreed to be paid under the rent note but at that time taxes were not levied. After the taxes were levied on the property there was agreement between the

landlord and the tenant that the taxes will be paid by the tenant. Thus, if there was agreement for payment of taxes, such taxes could not be paid monthly; rather it could be paid annually. It was therefore a case where rent was not payable monthly. If this was so then no decree for eviction under section 12(3)(a) could be passed.

The lower Appellate Court has then examined whether decree for eviction could be passed under section 12(3)(b) or not. The arrears of rent according to the landlord were due from 1.9.1975 whereas according to the tenant the rent was due from him since 1.2.1976. The lower Appellate Court from the evidence on record concluded that the rent was actually due from 1.9.1975 and the tenant failed to establish his case of payment of rent upto 31.1.1976. This is finding of fact which is hardly liable to be disturbed in this Appeal.

The landlord served a valid notice of demand and ejectment upon the tenant revisionist. The tenant revisionist remained unsuccessful in complying with the said notice of demand. The case therefore according to the Appellate Court fell within the ambit of section 12(3)(b) of the Act.

The Appellate Court then proceeded to examine whether the tenant's eviction could be saved under the provisions of section 12(3)(b) of the Act. There is clear finding of the lower Appellate Court that as many as 27 defaults were committed by the revisionist in making deposits in the Court. Detailed charts were incorporated in the judgment of the lower Appellate Court. It was therefore not a case where the tenant was regular in making deposit in Court. No doubt word 'regularly' has been deleted by amendment in section 12(3)(b) of the Act, but a Division Bench of this Court has held that such amendment did not have retrospective operation, rather such amendment will have prospective operation. Thus, the case was considered under the old law as it stood prior to the amendment under section 12(3)(b). The lower Appellate Court rightly found that the tenant was irregular in making deposits. If such irregularity was committed by the tenant the lower Appellate Court was perfectly justified in not exercising discretion under this section in favour of the tenant. The tenant revisionist having failed to establish that he made strict compliance of section 12(3)(b) of the Act was not entitled to any protection under this section. The suit for eviction was, therefore, rightly decreed by the lower Appellate Court.

For the reasons given above the judgment of the lower Appellate Court in accordance with law and since it is not contrary to law it cannot be disturbed in this revision. As such, revision has no merit and is hereby dismissed. Parties shall bear their own costs.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt